

November 27, 2000

D.T.E. 99-92

Petition of more than twenty (20) residents of the town of Royalston, Massachusetts pursuant to General Laws chapter 159, § 24, to extend their local calling area to include the towns of Richmond and Fitzwilliam, New Hampshire.

APPEARANCES: Linda Alger, Chairman

Royalston Board of Selectmen

Royalston Town Hall

7 School Street

Royalston, Massachusetts 01368

FOR: Petitioners

Barbara Anne Sousa

Verizon New England

185 Franklin Street, Room 1403

Boston, Massachusetts 02110

FOR: VERIZON NEW ENGLAND, INC., d/b/a VERIZON MASSACHUSETTS

Respondent

- INTRODUCTION

On November 2, 1999, the Department of Telecommunications and Energy ("Department") received a Petition pursuant to G.L. c. 159, § 24, from over twenty (20) customers in the town of Royalston, Massachusetts requesting the inclusion of the towns of Richmond, New Hampshire and Fitzwilliam, New Hampshire in the Verizon New England, Inc. d/b/a/ Verizon Massachusetts ("Verizon" or "Company") primary calling area ("PCA")⁽¹⁾ for the town of Royalston. The Petition was docketed as D.T.E. 99-92.

After due notice, the Department held a public hearing in Royalston on

March 21, 2000.⁽²⁾ The Department heard testimony from residents of Royalston, including, Bill Reopael, the Clerk of the Royalston Board of Selectmen (Tr. at 11), and Linda Alger, the Chairman of the Royalston Board of Selectmen (Tr. at 13). The Department also received a letter from Senator Stephen Brewer in support of the Petition. The evidentiary record includes the Company's response to one information request.⁽³⁾ The Company's representatives appeared at the hearing, but did not testify.

II. POSITIONS OF THE PARTIES

A. Petitioners

At the public hearing, many Petitioners noted the close geographic proximity of Royalston, Massachusetts to both Richmond and Fitzwilliam, New Hampshire, and referred to the towns as "neighbors" and a "community" (Tr. at 14, 18, 24). Selectman Linda Alger testified that the town of Royalston works cooperatively with the towns of Fitzwilliam and Richmond for municipal aid, fire-fighting, public safety, and public works, and that toll-free calling is in the interest of public safety (*id.* at 13). Selectman Alger noted that the Royalston Board of Selectmen unanimously supported the petition (*id.*). Walter Gunderman testified that toll-free calling would assist the communities in providing mutual aid to each other, and noted that the ambulance service, paramedic service, fire departments, and police departments of the three communities have become "intertwined" (*id.* at 27). Several residents and elected officials from the towns of Fitzwilliam and Richmond, New Hampshire also testified in support of expanding the PCA to cover the three towns (*id.* at 7, 10, 19). Representative William D. Rose from New Hampshire testified that the Royalston and Richmond Fire Departments have a long

history of cooperation, and frequently assist each other in fighting fires along the state line (id. at 8). Wendy Otto of Fitzwilliam, New Hampshire testified that the fire departments, police departments, and road crews of the three communities work cooperatively, out of a sense of community (id. at 21-22).

B. Verizon

Verizon did not make a statement at the public hearing, nor did it file any written testimony.

III. STANDARD OF REVIEW

Under the provisions of G.L. c. 159, § 16, the Department may order Verizon to make changes in service when the Department finds such service to be "unjust, unreasonable, unsafe, improper, or inadequate" Before ordering changes, however, the Department must consider "the relative importance and necessity of the changes ... the financial ability of the carrier to comply with the requirements of the order, and the effect ... of such other changes, if any, as may be deemed by the Department [to be] of equal or greater importance and necessity in the performance of the service which the carrier has professed to render to the public." G.L. c. 159, § 16.

In New England Telephone and Telegraph Company, the Department balanced customers' interests in expanding PCAs against the advantages of a comprehensive rate structure that was cost-based and fair, ensured rate continuity for customers and earnings stability for the Company, and protected universal service. New England Telephone and Telegraph Company, D.P.U. 89-300, at 64-72. The Department determined, after reviewing the relevant costs and balancing the Department's rate structure goals of fairness, rate continuity and protection of universal service, that a reasonable PCA would include the customer's home and contiguous exchanges. Id. at 69-70 (1990). The Department also found that increasing the scope of PCAs could, "over time, push [local exchange] rates to much higher levels," which "could make the unlimited service option unaffordable to many customers and might, thus, pose problems for rate continuity." Id. The Department also noted that expansion of PCAs to permit toll-free calling on a county or region-wide basis would exacerbate existing rate disparities among PCAs and move the rate structure further from fair and consistent calling areas. Id. at 69-70.

The Department has relied on D.P.U. 89-300 when deciding PCA cases. See, e.g., Somerville, D.T.E. 99-109 (2000); Warren, D.T.E. 97-31 (1998); Charlton, D.P.U. 95-88 (1997); Dennis, D.P.U. 95-35 (1996); Freetown, D.P.U. 95-21 (1996); Southern Berkshire/Pittsfield, D.P.U. 90-277 (1992). In Southern Berkshire/Pittsfield, D.P.U. 90-277, at 7, the Department further noted that it was not reasonable or cost-effective to require Bell Atlantic to redesign exchanges solely for the purpose of matching the existing municipal boundaries.

The Supreme Judicial Court has addressed the PCA issue and held that the Department's PCA policy is not arbitrary and capricious simply because a PCA results in perceived

inequities. Bosley v. Department of Public Utilities, 417 Mass. 510, 513 (1994). The Court found that the Department's adoption of home and contiguous exchanges was a proper balance of customers' interest in expanding PCAs against the advantages of a comprehensive rate structure, earnings stability for Bell Atlantic, and protection of universal service. Id. The Court stated that the Department's proffered reason -a comprehensive system and the over-all reduction in rates provided by that system - amply justifies the Department's decision. Id. at 514. The Court also noted that the Department is better equipped to balance the competing interests in such cases and affords it substantial deference to do so. Id. at 513.

IV. ANALYSIS AND FINDINGS

The Petitioners seek to expand the Royalston PCA to include the towns of Richmond and Fitzwilliam, New Hampshire.⁽⁴⁾ The Department has previously held that a PCA is determined by "home and contiguous" exchange boundaries, not "home and contiguous" municipal boundaries. New England Telephone and Telegraph Company, D.P.U. 89-300,

at 52; see also, Somerville, D.T.E. 99-109 (2000), citing Southern Berkshire/Pittsfield, D.P.U. 90-277 (1990) (noting that it was not reasonable or cost-effective to require Verizon's predecessor, NYNEX, to redesign exchange boundaries solely for the purpose of matching existing municipal boundaries).

Verizon provided exchange maps showing that the majority of the municipality of Royalston, Massachusetts is served from the Athol exchange, except for 10 lines in eastern Royalston, that are served from the Winchendon exchange (Exh. DTE- 1-1, att. 1). The exchange maps also showed that Richmond and Winchester, New Hampshire are served from the Winchester exchange, and that Fitzwilliam, New Hampshire is served from the Fitzwilliam exchange (Exh. DTE- 1-1, att. 2).

○ Royalston Customers Served from Winchendon Exchange

As discussed supra, the Department has determined that a reasonable PCA consists of a customer's home and contiguous exchanges. The Winchendon exchange, which currently serves about ten lines in eastern Royalston, is not contiguous with either the Winchester, New Hampshire or the Fitzwilliam, New Hampshire exchanges. Therefore, in order for the ten lines in eastern Royalston to enjoy toll-free calling to Richmond and Fitzwilliam, New Hampshire, the PCA of the Winchendon exchange would need to be expanded to include the non-contiguous Winchester and Fitzwilliam exchanges. The Petitioners have not offered any argument that would distinguish this case from others in which the Department has denied requests that a PCA be expanded to include non-contiguous exchanges (e.g. Somerville, D.T.E. 99-109).

Accordingly, with regard to the lines in Royalston that are served by the Winchendon exchange, the Department finds that a change in the existing framework would disrupt the Department's goals of economic efficiency, fairness, simplicity, and consistency in

the statewide concept of PCAs as defined in New England Telephone and Telegraph, D.P.U.

89-300 (1990). Adherence to the Department's "home and contiguous" exchanges precedent results in reasoned consistency and departure from precedent cannot be justified in this instance. Therefore, the Department finds that the exclusion of the Winchester and Fitzwilliam, New Hampshire exchanges from the PCA of the Winchendon exchange is consistent with the Department's long-standing "home and contiguous" standard, and is just, reasonable, proper, and adequate pursuant to G.L. c. 159, § 16.

- Royalston Customers Served from Athol Exchange

As discussed supra, the Department has determined that a reasonable PCA consists of a customer's home and contiguous exchanges. In New England Telephone and Telegraph, D.P.U. 89-300 at 55, 68, the Department did not find it per se unreasonable for a PCA to cross a state line, but noted that because a federal waiver was required, the Department was precluded from approving an interstate PCA expansion.

According to the exchange maps provided by Verizon, the Athol, Winchester, and Fitzwilliam exchanges are contiguous. In addition, the record demonstrates that Verizon's local rate structure would not be adversely affected. Petitioners have demonstrated customer interest in the PCA expansion through public comment and the unanimous support of the Royalston Board of Selectmen.

With regard to the requirement that the Petitioners demonstrate a need for the expansion of the PCA across state lines, the Department finds that the Petitioners have demonstrated that the rural nature of the three communities makes them dependent on one another for essential public safety services such as fire-fighting and police protection, and that toll-free calling is a helpful element of providing mutual aid. The Department has held previously that customers should be able to call their home and contiguous exchanges without incurring a toll charge. D.P.U. 89-300, at 64-68. To date, customers in Royalston (in the Athol exchange) have not had the benefit of what other customers throughout the Commonwealth already enjoy - toll-free calling to their home and contiguous exchanges - because Royalston is located on the border of Massachusetts and New Hampshire. This Order sets in motion the process to rectify that situation by granting customers in the Athol exchange toll-free access to their home and contiguous exchanges. Therefore, the Department finds that Verizon's current service to the ratepayers of the Athol exchange is "inadequate" within the meaning of G.L. c. 159, § 16, and that the PCA of the Athol exchange should be expanded to permit one-way calling to the Winchester and Fitzwilliam, New Hampshire exchanges.⁽⁵⁾ Verizon is directed to file a "Request for Limited Modification of LATA Boundaries to Provide One-Way ELCS To the Winchester and Fitzwilliam New Hampshire Exchanges from the Athol, Massachusetts Exchange" with the Federal Communications Commission ("FCC")⁽⁶⁾ so that the Winchester and Fitzwilliam, New Hampshire exchanges will be included in the primary calling area for customers in the Athol, Massachusetts exchange. Verizon shall file its

petition with the FCC within three weeks of the date of this Order, and shall request expedited treatment. A copy of Verizon's petition shall be served on the Department and on the Board of Selectmen of the town of Royalston. Verizon shall also serve a copy of any FCC ruling on the Department and on the Board of Selectmen of the town of Royalston.

V. ORDER

Accordingly, after due notice, hearing, and consideration, it is

ORDERED: That the Petition filed on November 2, 1999, by more than twenty (20) customers of Verizon and supported by the Board of Selectmen of the town of Royalston, requesting that the Department approve the inclusion of the towns of Richmond, New Hampshire and Fitzwilliam, New Hampshire in the Verizon primary calling area of the town of Royalston, is hereby approved in part and denied in part; and it is

FURTHER ORDERED: That Verizon shall file with the FCC a "Request for Limited Modification of LATA Boundaries to Provide One-Way ELCS to the Winchester and Fitzwilliam New Hampshire Exchanges from the Athol, Massachusetts Exchange" so that the Winchester and Fitzwilliam, New Hampshire exchanges will be included in the primary calling area for customers in the Athol, Massachusetts exchange; and it is

FURTHER ORDERED: That upon FCC approval, Verizon shall amend the PCA to permit one-way toll-free calling from the Athol, Massachusetts to the Winchester and Fitzwilliam, New Hampshire exchanges, and it is

FURTHER ORDERED: That Verizon shall comply with the requirements as set forth in this Order.

By Order of the Department,

James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. The PCA for any particular Verizon exchange is defined as all exchanges that a customer who subscribes to basic unlimited service can call without incurring a usage (toll or local per-message/per-minute) charge. New England Telephone and Telegraph Company, D.P.U. 89-300, at 52 (1990).
2. Although Verizon did not formally intervene, the nature of the proceeding made the Company a de facto party, and the Company was not foreclosed from asserting its rights as a party.
3. On September 27, 2000, the Department, on its own motion, moved the Company's response into the record and marked it as Exh. DTE-1-1. No objection was received to the motion.
4. Although Petitioners did not say so explicitly, it can be discerned from their assertions that they seek two-way toll-free calling between Royalston and Richmond and Fitzwilliam, New Hampshire.
5. The Department does not have the authority to order two-way toll-free calling in this context. The Department's regulatory authority does not extend beyond the cities and towns of the Commonwealth of Massachusetts. The Department cannot order Verizon-New Hampshire to include the Athol exchange among the exchanges that residents of Richmond and Fitzwilliam, New Hampshire can call without incurring a charge. Corresponding approval is required from the New Hampshire Public Utilities Commission ("NHPUC") before customers in New Hampshire may enjoy reciprocal toll-free calling to Massachusetts.
6. Section 271(b)(1) of the Telecommunications Act of 1996 prohibits Bell Operating Companies ("BOCs") from providing service across LATA boundaries until the BOC receives FCC approval to carry such traffic. Section 3(25)(B) of the Act permits the FCC

to modify LATA boundaries, but Verizon must seek a waiver from the FCC in order to do so. See In the Matter of Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations, CC Docket No. 96-159, File Nos. NSD-LM-97-2 through NSD-LM-97-25,

FCC 97-244 (July 15, 1997).